

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.

MARIE-NANETTE JULIE

Criminal Side No. 49 of 2006

Mr. Esparon for the Republic

Mr. Juliette for the Accused

RULING

Gaswaga, J

The applicant, through her lawyer Mr. Juliette, is objecting to her further remand in custody as prayed by Mr. Esparon, State Counsel, who submitted that the offence with which the applicant is charged is serious in nature. Two different counts of offence have been preferred against the applicant to wit:

Count 1

Statement of offence

Cultivation of a Controlled drug contrary to Section 8 of the Misuse of Drugs Act read with Section 26(1) (a) of the same and punishable under Section 29(1) of the said Misuse of Drugs Act read with Second Schedule of the same.

Particulars of offence

Marie-Nanette Julie on or about 29th September, 2006, at Les Canelles, Mahe was found cultivating a Controlled Drug, namely 18 plants of Cannabis.

Count 2

Statement of offence

Trafficking in a Controlled Drug contrary to Section 5 of the Misuse of Drugs Act read with Section 26(1) (a) of the same and punishable under Section 29(1) of the said Misuse of Drugs Act read with the Second Schedule of the same.

Particulars of offence

Marie-Nanette Julie on the 29th September, 2006, at Les Canelles, Mahe was trafficking in a Controlled Drug by virtue of having found in the possession of 81.8 grams of Cannabis which gives rise to the rebuttable presumption of having possessed the said Controlled Drug for the purpose of trafficking.

Bail is a Constitutional right which should be granted to every person accused of an offence and presented before a Court of law unless the accused's case and or the circumstances fall within any of the six categories of exceptions outlined in **Article 18(7) (a)-(f) of the Constitution 1993**. The applicant continues to be detained in prison on grounds of seriousness of the above offences and Mr. Juliette challenges the said ground and submits that most of the offences filed before this Court are serious in nature and this would mean incarcerating all the people appearing before the Court. I think he had in mind the definition of a serious offence as being one that carries a sentence of a fine of SR. 10, 000/- or imprisonment for a term of not less than three years or both fine and term of imprisonment. **See Section 100(5) of the Criminal Procedure Code (as amended by Act No. 15 of 1995) and Mervin Benoit vs. The Republic Crminimal Appeal No. 18 of 2004.**

He also had a quarrel with the practice of the Court imprisoning people like the applicant who have not yet been proven guilty especially that she has arguably a

good case; that she was not present when her premises (house), which stands on the land that belongs to a third party was being searched; that she lives with and looks after a 12-year old boy and a 67 year old mother and she is the sole bread earner.

The Court is alive to the provisions of **Article 19(2) (a) of the Constitution 1993** and indeed considers and treats this applicant as being innocent till proven otherwise or pleads guilty. But it should be noted that pre-trial incarceration is not a punishment. The Court must be careful while walking this fragile balance before denying the accused of her liberty at this stage and examine not only the charges before it but also the surrounding circumstances. It is premature for this Court to evaluate the evidence to be relied on in the main trial as at this time, in most cases, prosecution is still gathering it or compiling the police file. However, by the time one comes within police notice and charges are preferred there must be some evidence on record linking them to the offence in one way or another and should therefore expect some inconvenience.

The framers of the Constitution must have considered a number of aspects before listing 'seriousness of offence' as one the grounds on which to base a decision to remand an accused in custody at this stage of the trial. It could be stated that on the face of the charge sheet the offences are serious, or attract big sums of fines or long imprisonment terms upon conviction, or that they are rampant in society and that if the accused is released on bail may abscond or commit further offences. The captioned offences could be the type that may have very grave effects not only on the accused but also on other members of the society hence warranting the isolation of the accused from the rest so that the public is saved of such effects. In my view, it is not just the writings on paper and therefore the allegation of seriousness of the offence as submitted by Mr. Juliette that the Court looks at but it

is a combination of factors that reflect the seriousness of a given offence.

A perusal of the offences herein reveals that the accused is charged with cultivation of and trafficking in a controlled drug which offences attract a minimum sentence of 10 and 8 years imprisonment respectively. Needless to emphasize the enormous and long term effects of consumption of controlled drugs on men, women and children of this country and the world. I take judicial notice of the number of such new cases that are filed in this Court every week. It is indeed alarming for such a small country with a small population, which situation calls for the responsible organs to put an end if possible or prevent this flourishing trade. The Court is sympathetic to the applicant's social situation and responsibilities but one ought to have had this in mind before setting out to venture, if she at all did, into such activities. Moreover, members of the public are at the moment well aware that the police is out to search for whoever is still daring to get involved in the possession, consumption and or trafficking of controlled drugs.

From the above discourse, I reject the submission by the defence counsel and remand the applicant in prison under Section 179 of the Criminal Procedure Code Cap 54 for another fourteen days.

I so order.

D. GASWAGA

JUDGE

Dated this 15th day of November, 2006.